IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8767 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN WD/O. JERAMBHAI RAGHAVBHAI GHELANI - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR AMIT V THAKKAR for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR.SATYAM CHHAYA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
MR DHARMESH V SHAH for Respondent(s) : 4,
RULE UNSERVED for Respondent(s) : 4.2.1, 4.2.2,4.2.3
DS AFF.NOT FILED (R) for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/07/2007

ORAL JUDGMENT

The matter was mentioned in the morning by the learned advocate Mr.Dharmesh V. Shah, who had filed

his appearance for respondents no.4(a), (b) and (c). The learned advocate submitted that he be permitted to retire from the matter as respondents no.4(a) to © do not want that he should appear in the matter. They also sought 'No Objection' on the Vakalatnama of learned advocate Mr.A.M. Kapadia. The request was deferred.

Now, when the matter is called out, Mr.A.M. Kapadia is present. Learned advocate Mr.Dharmesh V. Shah is allowed to retire from the matter. Mr.A.M. Kapadia to file his appearance for respondents no.4(a) 4(c).

2. The matter arises from the order passed by the Collector dated 08.05.2003, whereby the Collector cancelled mutation entry no.946, which was made on 16.10.1996. By the said mutation entry, the names of the present petitioners were entered into the revenue records on the basis of a registered will. The order of the Collector was challenged before the Secretary, Revenue Department, who rejected the Revision application by order dated 25.06.2003, a copy of which is at Annexure 'A' to this petition.

3. It is shocking that later on the same authority, i.e. Secretary, Revenue Department (Appeal) passed another oder, which is produced at Annexure 'M' with an amendment which bears the date of 2nd June/ July 2003. Whereas, the operative part of the order bears the date of 30.06.2003. Taking into consideration these two orders in the same case, this Court deems it fit to direct the office to furnish these two orders to the Chief Secretary, State of Gujarat for necessary action in the matter and to report to this Court the action taken in the matter.

4. Mr.Sanjanwala, learned advocate for the petitioners informs that a Regular Civil Suit was filed challenging the validity of the will executed in favour of the petitioners, in the Court of the learned Civil Judge, Senior Division, Surat being Regular Civil Suit No.108 of 2003 by respondent no.4(a), (b) and (c), but then the said suit was withdrawn by them. Mr.Sanjanwala also informs this Court that the matter is settled between the parties. Mr.Kapadia, learned advocate, who now appears for respondents no.4 (a), (b) & (c) states on instructions that respondents no.4(a) and (c), who are present in the

Court that the matter is settled between the parties. Mr.Kapadia, learned advocate made available a certified copy of the plaint and also Purshis filed by respondents no.4 (a), (b) & (c) declaring this fact before the civil court. The same is taken on record.

5. In view of the aforesaid development that the matter is settled between the parties and also by taking into consideration the fact that mutation entry made in 1996 was taken in suo motu revision in 2003, after long 7 years, the matter requires to be allowed. The orders passed by the Secretary (Appeals) dated 25.06.2003, 2nd June/ July 2003, 30.06.2003 (which are already subjected to an inquiry by order of this Court) and order dated 08.05.2003 passed by the Collector are quashed and set aside. The Special Civil Application is allowed.

6. Mr.Sanjanwala, learned advocate for the petitioners requested that the consequential entry made by the authorities in the revenue record produced at Page 63(E), Annexure 'N' to the petition be also quashed with a direction to the authorities to make appropriate entry afresh or to revive mutation entry

no.946 dated 16.10.1996. The request is found reasonable. Entry No.1076 dated 20.05.2003 (Annexure 'N', Page 63E to the petition) is quashed and set aside. Entry No.946 dated 16.10.1996 is revived. Rule is made absolute. No order as to cost.

7. A copy of this order be made available to learned AGP Mr.Satyam Chhaya for its onward communication and compliance.

(RAVI R. TRIPATHI, J.)

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